

Serial No. 10/806,687

MAY 13 2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Andrew Mark Proehl

Art Unit: 2442

Serial No.: 10/806,687

Examiner: Robert B. Harrell

Filed: March 23, 2004

Confirmation No.: 2412

Title: A METHOD FOR RECEIVING A FILE HAVING A USER ALIAS AND AN
INDICATION OF THE USER'S CONTENT RATING IN A PEER-TO-PEER
NETWORK FROM A THIRD PARTY (as amended)

Docket No.: 50T5367.01

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF UNDER 37 C.F.R. §41.37

Sir:

As set forth in the Notice of Appeal dated February 19, 2009 and in response to the Notice of Panel Decision dated April 13, 2010, Appellants hereby appeal the final decision of the Examiner in the above-identified application rejecting Claims 1 and 3-7.

The fee under 37 CFR 41.20(b)(2) in the amount of \$540.00 may be charged to deposit account No. 50-1047. In addition, any deficiencies may be charged to deposit account No. 50-1047. Appellants respectfully request that the Board of Patent Appeals and Interferences reverse the Examiner's rejection of the claimed subject matter.

Certificate of Facsimile Transmission

I hereby certify that this document and any document referenced herein has been transmitted via facsimile to the US Patent and Trademark Office at (571) 273-8300 on May 13, 2010.

Karin L. Williams

(Printed Name of Person Mailing
Correspondence)

Karin L. Williams
(Signature)

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I. REAL PARTY IN INTEREST

Sony Corporation and Sony Electronics Inc. are the assignees of the present invention and the real parties in interest.

II. RELATED APPEALS AND INTERFERENCES

No prior and pending appeals, judicial proceedings or interferences are known to the appellant which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

The presently pending claims are Claims 1 and 3-7. Claims 2 and 8-20 were cancelled. Claims 1 and 3-7 are on appeal. A copy of each of appealed Claims 1 and 3-7 is provided in the attached Appendix.

Appellant hereby appeals the final decision of the Examiner in the above-identified application rejecting Claims 1 and 3-7.

IV. STATUS OF AMENDMENTS

A final Office Action was mailed on November 19, 2009, rejecting Claims 1 and 3-7. Appellant responded to the final Office Action with an Amendment and Response to Final Office Action dated January 19, 2010.

The Examiner responded with an Advisory Action dated February 2, 2010 in which he entered Appellant's Amendment and Response to final Office Action but maintained the rejection of each of Claims 1 and 3-7. No further amendments have been made.

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V. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention has two independent claims, Claim 1 and Claim 6.

Claim 1 is directed to a method for interacting with a user over a peer-to-peer network (para. [0027], lines 1-3, corresponding to page 9, lines 8-10; FIG 5). The method includes receiving a file from a user via a third party (para. [0027], lines 3-4, corresponding to page 9, lines 10-11; FIG 5, element 51); receiving with the file an alias identifying the user (para. [0027], lines 4-5, corresponding to page 9, lines 11-12; FIG 5, element 52) and a content rating from the user, the content rating providing an indication of the user's rating of the file (para. [0027], lines 3-4, corresponding to page 9, lines 10-11; FIG 5, element 51); storing in the third party identity information about the user in association with the alias (para. [0027], lines 5-12, corresponding to page 9, lines 12-19; FIG 5, element 53); and linking the alias to a valid legal identity and financial account while maintaining control and privacy over the valid legal identity and the financial account (para. [0027], lines 5-6, 14-16 corresponding to page 9, lines 12-13 and page 9, line 21 to page 10, line 2; FIG 5, elements 53 and 57; para. [0022], lines 11-14, corresponding to page 7, lines 15-18).

Claim 6 is directed to a method for interacting with a user over a peer-to-peer network (para. [0027], lines 1-3, corresponding to page 9, lines 8-10; FIG 5). The method includes receiving a file from a user via a third party (para. [0027], lines 3-4, corresponding to page 9, lines 10-11; FIG 5, element 51); receiving with the file an alias identifying the user (para. [0027], lines 4-5, corresponding to page 9, lines 11-12; FIG 5, element 52); storing in the third party identity information about the user in association with the alias (para. [0027], lines 5-12, corresponding to page 9, lines 12-19; FIG 5, element 53); linking the alias to a valid legal identity and financial account while maintaining control and privacy over the valid legal identity and the financial account (para. [0027], lines 5-6, 14-16 corresponding to page 9, lines 12-13 and page 9, line 21 to page 10, line 2; FIG 5, elements 53 and 57; para. [0022], lines 11-14, corresponding to page 7, lines 15-18); and aggregating by the third party a content ranking with a plurality of other content rankings from other users and making this available to others without identification of the users or aliases (para. [0027], lines 12-16, corresponding to page 9, line 19 to page 10, line 1; FIG 5, element 56).

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VI. GROUNDS OF REJECTION TO BE REVIEWED UPON APPEAL

The following grounds of rejection are presented for review:

A. Whether or not Claims 1 and 3-7 are anticipated under 35 U.S.C. §102(e) by Karas et al. (U.S. Patent Application Publication No. US2003/0130907 ("Karas")).

B. Whether or not Claims 1 and 3-7 are unpatentable under 35 U.S. C. §103(a) over Karas et al. (U.S. Patent Application Publication No. US2003/0130907 ("Karas")).

VII. ARGUMENT

A. Rejection under 35 U.S.C. §102(e)

Claims 1 and 3-7 are rejected under 35 U.S.C. §102(e) as being anticipated by Karas et al. (U.S. Patent Application Publication No. US2003/0130907 ("Karas")).

It is respectfully submitted that this rejection is clearly erroneous.

For a reference to anticipate a claim it must disclose each and every element of the claim. See MPEP 2131 and cases cited therein, especially *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989) and *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). Karas fails to do so.

First, Applicant again notes that the Advisory Action provided no substantive comments on the Applicant's arguments/response (to the Final Action) submitted on January 19, 2010, but simply states that the reasons are 'outlined in the Final Office Action' (Applicant notes that Karas was cited for the first time in the Final Action – and therefore the arguments submitted by Applicant in the January 19, 2010 response, were NOT previously considered, nor has the Examiner responded to such arguments).

Karas is directed to "electronic gift linking", in which an electronic greeting card provides an embedded 'code' that is indicative of the gift (Abst).

Applicant's independent Claim 1 is directed to a method for interacting with a user over a peer-to-peer network, including receiving a file from a user via a third party, receiving with the file an alias identifying the user and a content rating from the user, the

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content rating providing an indication of the user's rating of the file, storing in the third party identity information about the user in association with the alias, and linking the alias to a valid legal identity and financial account while maintaining control and privacy over the valid legal identity and the financial account.

Again, independent Claim 1 was previously amended to include the limitations of original dependent Claim 2, and specifically to clarify that the content rating from the user provides an indication *of the user's rating of the file*.

Independent Claim 6 recites each of the elements of independent Claim 1 and further recites the step of aggregating by the third party a content ranking with a plurality of other content rankings from other users and making this available to others without identification of the users or aliases.

Applicant respectfully directs the Examiner at least to paragraphs [0021], [0026] and [0027], and to Figure 3, 'rating 33', of Applicant's specification as filed. As described therein, a meta data file is attached to transferred content, and "each recipient 31, 32 of the content file 34 receives a history of *who sent the content, and the rating 33 these people applied to the content 34*" (i.e., the 'recommendations' or 'ratings' of the person sending the content are provided to the recipients of that content).

Karas fails to teach or suggest this claimed element. Specifically, with regard to the recited step of *receiving a file including a content rating from the user, the content rating providing an indication of the user's rating of the file*, the Final Action directs Applicant to paragraph [0072] of Karas (see page 3, paragraph 9(b) of Final Action).

In paragraph [0072], Karas describes how a sender 110 may include a 'personalized portion 708' in a card "with possible hot links to information". Karas notes:

"when creating the eCard, certain *predetermined information is 'made available', such as, product information, retailer information, manufacturer information, product reviews, tracking information, warranty information, content ratings, safety ratings, recall information, frequently asked questions, care instructions, clearing status of a money transfer,....*"

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Applicant submits that Karas does not teach or suggest that a method of interacting with a user in a peer-to-peer environment, including receiving a file from a user via a third party, and receiving with the file, an alias identifying the user and a content rating from the user, the content rating providing an indication of the user's (i.e., the person sending the file) rating of the file – rather in Karas, only ‘predetermined information’ is ‘made available’. There is simply no teaching or suggestion in Karas that an indication of the USER’S RATING (the “user” being the person who is sending the file) is provided with the file.

In addition, even the information that is ‘available’ is not a ‘rating’ *regarding the file* as noted in paragraph [0031] of Karas, a “code *indicative of the gift* is created...[and] facilitates retrieving information about the gift” (the ‘file’ sent in Karas is an electronic greeting card (see Examiner’s assertion in paragraph 9, line 3 – “a file (i.e., *Greeting Card* per figure 12(A))” – the code that is embedded into the card allows the recipient to retrieve information about the gift (again, not about the ‘card’ (or file), and not including any rating information from the sender about the e-card).

For at least the foregoing reasons, Applicant respectfully submits that independent Claim 1 is patentable over Karas, and reconsideration is requested.

Independent Claim 6 further recites the step of aggregating by the third party a content ranking with a plurality of other content rankings from other users and making this available to others without identification of the users or aliases.

The Final Action states (para. 11) that “paragraph [0072 (line8)] (of Karas) clearly taught ‘product reviewS’, in the plural...”. Again, Applicant traverses this reading of Karas and submits that Karas does not teach or suggest that a review “of the person sending the file” is provided to the recipient (para. [0072] of Karas states that “when creating the eCard, certain *predetermined information is made available, such as product information....*” – this does not provide any teaching or even suggestion of sending a file to a recipient, wherein the recipient receives with the file an alias identifying the user and a content rating of that file from the user).

Thus, Karas does not teach each and every element of the claimed invention and this rejection should be reversed as erroneous. Reconsideration and withdrawal of the rejection under 35 U.S.C. 102(e) are respectfully requested.

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B. Rejection under 35 U.S.C. §103(a)

The Examiner also rejects Claims 1 and 3-7 under 35 U.S. C. §103(a) as being unpatentable over Karas et al. (U.S. Patent Application Publication No. US2003/0130907 ("Karas")).

It is respectfully submitted that this rejection is clearly erroneous.

Of course, for a proper obviousness rejection, the differences between the subject matter sought to be patented and the prior art must be such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. 35 U.S.C. §103. The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. MPEP 2141. Rejections on obviousness cannot be sustained by mere conclusory statements.

With regard to the 103(a) rejection as to Claim 6, paragraph 15 of the Action takes the position that "paragraph [0071] (of Karas) taught that the Greeting Card has a greeting portion 704 which could include animation or moving pictures [and] thus it would have been obvious...for the sender to send a Greeting Card with a humorous message content 704, and a content *rating* such as 'Everyone in the Office Likes This One'" (emphasis added herein).

Applicant respectfully traverses this alleged 'obvious' modification of the *actual* teachings of Karas. In fact, Karas describes only that a sender "chooses a greeting portion 704 of the card 700 that might have a cartoon, animation, picture, moving picture, and/or message" - this simply does not teach, or even *suggest*, that a recipient of such an eCard in Karas would receive a content file *with a rating that the sender applied to the content* (again, see para. [0021] of Applicant's specification, "each recipient 31, 32 of the content file 34 receives a *history* of who sent the content and *the rating 33 these people applied to the content 34*"). The Examiner is attempting to read something into the teachings of Karas that simply is not provided by Karas.

For at least the foregoing reasons, Applicant respectfully submits that Claim 6 is also patentable over Karas.

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Claims 1, 3-5 and 7 were not discussed in ANY manner as to the 103(a) rejection in the Final Action therefore it is impossible for Applicant to address these claims individually as to the alleged teachings of Karas and the applicability to each claim.

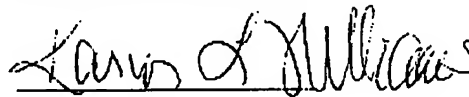
Dependent Claims 3-5 and 7 are believed patentable over the art of record for at least the same reasons as Claims 1 and 6, one or the other from which they depend, and as reciting additional distinguishing limitations.

Reconsideration and withdrawal of the rejection under 35 U.S.C. 103(a) are respectfully requested.

Conclusion

In view of the above, it is respectfully submitted that reversal of the rejection of record is in order.

Respectfully submitted,



Karin L. Williams
Registration No. 36,721

Attorney for Appellant
Mayer & Williams, PC
251 North Avenue West, 2nd Floor
Westfield, NJ 07090
908-518-7700 Tel
908-518-7795 Fax

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VIII. Claims Appendix

1. A method for interacting with a user over a peer-to-peer network comprising:
 - receiving a file from a user via a third party;
 - receiving with the file an alias identifying the user and a content rating from the user, the content rating providing an indication of the user's rating of the file;
 - storing in the third party identity information about the user in association with the alias; and
 - linking the alias to a valid legal identity and financial account while maintaining control and privacy over the valid legal identity and the financial account.
3. The method according to claim 1, wherein the user can select one or more information elements within identity information that can be sent along with the alias.
4. The method according to claim 3, wherein the one or more information elements include one or more of the following: an email address, a name, a mailing address, a telephone number, and a social security number.
5. The method according to claim 3, wherein the one or more information elements include one or more of the following: a bank account number, a credit card number, an age, a birth date, income information, employment information, purchasing preference information, and an education history.

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6. A method for interacting with a user over a peer-to-peer network comprising:

receiving a file from a user via a third party;

receiving with the file an alias identifying the user;

storing in the third party identity information about the user in association with the alias;

linking the alias to a valid legal identity and financial account while maintaining control and privacy over the valid legal identity and the financial account; and

aggregating by the third party a content ranking with a plurality of other content rankings from other users and making this available to others without identification of the users or aliases.

7. The method according to claim 1, further comprising:

acting as an intermediary between the user and other users to protect the privacy of the user and to enable financial or marketing transactions to occur between the user and another user or company.

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1. IX. Evidence Appendix

None.

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X. Related Proceedings Appendix

None.